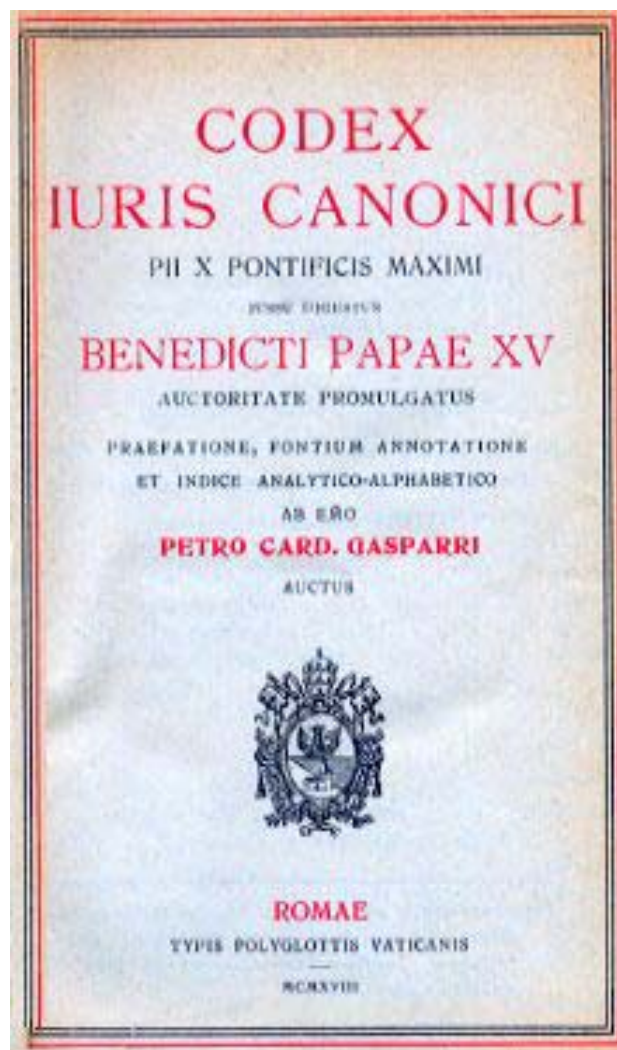




CODEX IURIS CANONICI

an. 1917

Textus sine fontium annotatione

Romae MMVII

Can. 2357. §1. Laici legitime damnati ob delicta contra sextum cum minoribus infra aetatem sexdecim annorum commissa, vel ob stuprum, sodomiam, incestum, lenocinium, ipso facto infames sunt, praeter alias poenas quas Ordinarius infligendas iudicaverit.

§2. Qui publicum adulterii delictum commiserint, vel in concubinato publice vivant, vel ob alia delicta contra sextum decalogi praeceptum legitime fuerint damnati, excludantur ab actibus legitimis ecclesiasticis, donec signa verae resipiscentiae dederint.

Can. 2358. Clerici in minoribus ordinibus constituti, rei alicuius delicti contra sextum decalogi praeceptum, pro gravitate culpae puniantur etiam dimissione e statu clericali, si delicti adiuncta id suadeant, praeter poenas de quibus in can. 2357, si his locus sit.

Can. 2359. §1. Clerici in sacris sive saeculares sive religiosi concubinari, monitione inutiliter praemissa, cogantur ab illicito contubernio recedere et scandalum reparare suspensione a divinis, privatione fructuum officii, beneficii, dignitatis, servato praescripto can. 2176-2181.

§2. Si delictum admiserint contra sextum decalogi praeceptum cum minoribus infra aetatem sexdecim annorum, vel adulterium, stuprum, bestialitatem, sodomiam, lenocinium, incestum cum consanguineis aut affinibus in primo gradu exercuerint, suspendantur, infames declarentur, quolibet officio, beneficio, dignitate, munere, si quod habeant, priventur, et in casibus gravioribus deponantur.

§3. Si aliter contra sextum decalogi praeceptum deliquerint, congruis poenis secundum casus gravitatem coerceantur, non excepta officii vel beneficii privatione, maxime si curam animarum gerant.

Can. 2368. §1. Qui sollicitationis crimen de quo in can. 904, commiserit, suspendatur a celebratione Missae et ab audiendis sacramentalibus confessionibus vel etiam pro delicti gravitate inhabilis ad ipsas excipiendas declaretur, privetur omnibus beneficiis, dignitatibus, voce activa et passiva, et inhabilis ad ea omnia declaretur, et in casibus gravioribus degradationi quoque subiiciatur.

§2. Fidelis vero, qui scienter omiserit eum, a quo sollicitatus fuerit, intra mensem denuntiare contra praescriptum can. 904, incurrit in excommunicationem latae sententiae nemini reservatam, non absolvendus nisi postquam obligationi satisfecerit aut se satisfacturum serio promiserit.

Can. 2369. §1. Confessarium, qui sigillum sacramentale directe violare praesumpserit, manet excommunicatio specialissimo modo Sedi Apostolicae reservata; qui vero indirecte tantum, obnoxius est poenis, de quibus in can. 2368, §1.

§2. Quicumque praescriptum can. 889, §2 temere violaverit, pro reatus gravitate plectatur salutari poena, quae potest esse etiam excommunicatio.

Can. 2370. Episcopus aliquem consecrans in Episcopum, Episcopi vel, loco Episcoporum, presbyteri assistentes, et qui consecrationem recipit sine apostolico mandato contra praescriptum can. 953, ipso iure suspensi sunt, donec Sedes Apostolica eos dispensaverit.

Can. 2371. Omnes, etiam episcopali dignitate aucti, qui per simoniam ad ordines scienter promoverint vel promoti fuerint aut alia Sacramenta ministraverint vel receperint, sunt suspecti de haeresi; clerici praeterea suspensionem incurrunt Sedi Apostolicae reservatam.

Can. 2372. Suspensionem a divinis, Sedi Apostolicae reservatam, ipso facto contrahunt, qui recipere ordines praesumunt ab excommunicato vel suspenso vel interdicto post sententiam declaratoriam vel condemnatoriam, aut a notorio apostata, haeretico, schismatico; qui vero bona fide a quopiam eorum sit ordinatus, exercitio careat ordinis sic recepti donec dispensetur.

THE 1922 INSTRUCTION AND THE 1962 INSTRUCTION
“*CRIMEN SOLLICITATIONIS*,” PROMULGATED BY THE VATICAN

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1. The document known as *Crimen sollicitationis* was issued by the Congregation of the Holy Office on March 16, 1962. It was presented by the Prefect, Alfredo Cardinal Ottaviani, to Pope John XXIII for his approval. This is the normal manner of receiving Papal approval for documents of this nature. It was then sent to all the bishops in the world. The bishops were admonished to maintain strict confidentiality about the document and ordered not to allow it to be reproduced or commented upon.

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

2. *Crimen Sollicitationis* remained in effect until 2001 when the Vatican published a new set of procedures for investigating and prosecuting especially grave canonical crimes, including certain sexual crimes committed by the clergy. Two official documents were issued. The first was an apostolic letter of Pope John Paul II, known by its Latin title *Sacramentorum sanctitatis tutela*, by which the actual norms were promulgated. This letter, dated April 30, 2001, was followed on May 18, 2001 by an official document that contained the actual norms. This latter document was signed by Cardinal Josef Ratzinger, prefect of the Congregation for the Doctrine of the Faith. Both documents refer to certain serious canonical crimes and among those is sexual abuse by clerics. These documents represent revised procedures to be used by Bishops and major religious superiors in response to allegations of clergy sexual abuse. Although Cardinal Ratzinger signed the document containing the norms, the source of the authority by which they became Church law was Pope John Paul II.

3. Clergy sexual abuse issues are handled by the Congregation for the Doctrine of the Faith, a major department of the Vatican administration. This has been the case since the 18th century although the name of the present congregation has been changed twice during this period. It was first known as the Supreme Sacred Congregation of the Roman and Universal Inquisition (1542-1908). At the beginning of the 20th century Pope Pius X changed the name to the Supreme Sacred

some kind of meeting with the archbishop where these protocols were discussed. When was that?

A. *With the Archbishop of Los Angeles?*

Q. *Yes.*

A. *Probably in the early sixties. Probably.*

Q. *Was that then Archbishop Manning?*

A. *Yes. (P. 159. 160)*

13. This document was issued before the Second Vatican Council had taken place and before the revision of the present Code of Canon Law (1983). The Vatican practice of issuing special procedural rules for its various courts or tribunals is not unusual. It is also not unusual to have a special document issued for a specific type of problem which in this case was solicitation of sex in the context of sacramental confession.

14. Title V of the document, "*De crimine pessimo*," includes the crimes of sexual contact with same sex partners, sexual contacts with minors and bestiality. These crimes are also to be processed according to these special norms. The document does not imply that these crimes were to have been perpetrated through solicitation in the confessional. It included them under the title "*The worst crimes*" and presumably because of their serious nature, they were included under these special procedural norms. The 1922 document has an identical section. The norms of *both documents* were thus established as the obligatory procedures for prosecuting cases of four separate and distinct canonical crimes, namely, a) solicitation for sex in the act of sacramental confession, b) homosexual sex, c) sexual abuse of minor males or females, d) bestiality or sex with animals. It is therefore incorrect to state that the norms and procedures of *Crimen Sollicitationis* are applicable only to cases of solicitation for sex in the confessional.

15. **These types four types of sexual crimes were already included in the Code of Canon Law (1917 version). Solicitation is covered in canon 2368, par. 1 and sexual contact with minors and bestiality in canon 2359, 2.** Ordinarily the prosecution of these crimes would be processed according to the procedural laws of the Code. The 1922 and 1962 documents provided special norms with an added emphasis on confidentiality because of the very serious nature of the crimes involved. These special procedural norms were an expansion, with added detail, upon the procedural law of the Code. The existence of this document also clearly proves that the highest

Catholic Church authorities were aware of the especially grave nature of the clergy sexual crimes considered. This of course makes it difficult for any Church leader to credibly claim that the problem of clergy sexual abuse was an unknown quantity prior to 1984.

16. Though some have claimed that *Crimen Sollicitationis* applies only to solicitation in the confessional, and not to other sexual crimes perpetrated by clerics, the opposite is true. The very words of the document itself clearly establish that those acts included under the classification of “the worst crime” (*de crimine pessimo*) are to be processed according to the norms set forth for the crime of solicitation. This issue was taken up by Msgr. Brian Ferme, J.C.D., in his article entitled “*Graviora delicta: the apostolic letter M.P. Sacramentorum sanctitatis tutela.*” which appeared in the book *Il processo penale canonico* (Rome: Lateran University Press, 2003):

While the instruction dealt specifically with solicitation and the procedural norms to be applied in judging this crime, the fifth chapter stated that the same norms were also to be observed for the “crimen pessimum (art. 71), which was understood to include paedophilia (art. 73). In other words at the promulgation of the CIC83 [Code of Canon Law, 1983] the “graviora delicta” reserved to the CDF seemed to be those concerned with solicitation, the violation of the seal of confession and the ‘crimen pessimum’ as understood by the 1962 Norms, though the actual praxis of the Congregation may have included others.

17. Furthermore, in a deposition of Msgr. Ferme taken in a civil case in California in 2005, he repeated this opinion when asked by the attorney taking the deposition about the relationship of pedophilia to the 1962 document:

Q. And according to your article, the '62 instruction was understood to include the crime of pedophilia, correct?

A. **Correct, as was the Code of Canon Law of 1917.**

Q. And that would be pedophilic acts committed either in connection with the confession or not, correct?

A. Correct.

In 2005 Msgr. Ferme also submitted an affidavit in the same civil case in which he said: *A careful and correct reading of Titulus V of the 1962 instruction establishes that what had heretofore been established for the crime of solicitation in the 1962 Instruction,*

21. To fully understand the concern for secrecy one must also understand the traditional canonical concept known as the “privilege of the forum” or “*privilegium fori*” which has its roots in medieval Canon Law. Basically this is a traditional privilege claimed by the institutional church whereby clerics accused of crimes were tried before ecclesiastical courts and not brought before civil or secular courts. Although this privilege is anachronistic in today’s society, the attitude or mentality which holds clerics accountable only to the institutional church authorities is still active. This does not mean that the official Church believes that clerics accused of crimes should not to be held accountable. It means that during certain periods in history the Church has believed that it alone should have the right to subject accused clerics to a judicial process. **The ‘*privilegium fori*’ was included in the 1917 Code of Canon Law:**

- 1. Clerics in all cases, whether contentious or criminal, shall be brought before an ecclesiastical judge, unless it has been legitimately provided otherwise in certain places.**
- 2. Cardinals, Legates of the Apostolic See. Bishops, even titular ones, Abbots, Prelates Nullius, Supreme Superiors of Religious Institutes of Pontifical Right, and major officials of the Roman Curia may not be summoned before lay judges for matters pertaining to their duties without referring first to the Holy See; the same is true for others enjoying the privilege of the forum, where the Ordinary of the place [diocesan bishop] where the matter is to be tried is to be approached. The Ordinary, however, especially when a lay person is the petitioner, will not deny this permission except for just and grave reasons, all the more so when he is unable to bring about a resolution of the controversy between the parties. (Canon 119)**

22. The canon that mentioned the privilege of the forum was not repeated in the revised Code of 1983. The attitude that supported the “*privilegium fori*”, that clerics should not be subjected to the civil law, still exists. Expressions of it have been heard especially in regard to recent cases of sexual abuse by clergy. Several Vatican officials including Julian Cardinal Herranz, Tarcisio Cardinal Bertone and Fr. Gianfranco Ghirlando, S.J., have issued public statements to the effect that bishops should not be obliged to cooperate with secular legal authorities in cases involving sexual abuse by clerics. Cardinal Herranz, at the time President of the Pontifical Council for the Interpretation of Legislative texts, said:

While recognizing the competence of civil authorities, Herranz expressed strong reservations about the application to the Catholic church of two

confidentiality. The obsession with secrecy causes denial to flourish. Certainly the institutional church and its clergy and hierarchy would have been deeply embarrassed in 1922 or in 1962 were the public to have learned of clergy sexual crimes. This embarrassment should have been endured because it is nothing compared to the spiritual, emotional and physical devastation of the victims.

27. Nevertheless we cannot accurately interpret and criticize this document solely by our contemporary standards based on the institutional church's handling of clergy sex abuse cases over the past few years. It is dangerous to isolate the document and strain to make it more than what is was intended to be for in so doing the meaning of the document and the actual intention of the framers can become distorted.

28. The institutional Catholic Church has been criticized for having a culture of secrecy, especially with regard to clergy sexual misconduct. Such secrecy in these matters has not been the constant practice of Church leadership since its own documentation from the past demonstrates that official attempts to curb violations of mandatory clerical celibacy were regularly published to all. For example, the Apostolic Constitution *Sacramentum Poenitentiae*, issued by Pope Benedict XIV in 1741, was included in the 1917 *Code of Canon Law*.

29. It appears that the obligation of secrecy for such cases was imposed by Pope Pius IX in 1866. The official document that imposes the secrecy was published on February 20, 1866 by the Sacred Congregation of the Holy Office in the form of an “*Instruction*”. This instruction provided clarification on certain aspects of the previous papal constitution dealing with solicitation in the confessional, *Sacramentum Poenitentiae* (1741) of Pope Benedict XIV. The actual text is as follows:

Par. 14. In handling these cases, either by Apostolic commission or the appropriate ruling of the Bishops, the greatest care and vigilance must be exercised so that these procedures, inasmuch as they pertain to [matters of] faith, are to be completed in absolute secrecy, and after they have been settled and given over to sentencing, are to be completely suppressed by perpetual silence. All the ecclesiastic ministers of the curia [court], and whoever else is summoned to the proceedings, including counsels for the